

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOE T. STARLING,

Appellant.

No. 60941-6
(consolidated with Nos.
60943-2-I and 60942-4-I)

DIVISION ONE

UNPUBLISHED OPINION

FILED: July 27, 2009

J. Leach — Joe T. Starling challenges the sentencing court’s inclusion of juvenile convictions that occurred before he turned age 15 in his offender score calculation. He contends that the 2002 amendments to the Sentencing Reform Act of 1981 (SRA) do not require the inclusion of these previously “washed out” juvenile convictions. But Washington State Supreme Court precedent establishes that the 2002 SRA amendments require that courts include previously “washed out” convictions when calculating offender scores for crimes committed after the amendments’ effective date. Because we are bound by our Supreme Court’s precedent and because Starling’s current offenses occurred after the effective date of the 2002 SRA amendments, we conclude that the sentencing court properly counted Starling’s prior juvenile convictions toward his

offender score.

Background

Starling was charged with several criminal counts, including violations of the Uniform Controlled Substances Act and driving while under the influence (DUI), arising out of incidents in December 2005 and in December and May 2006. As part of a plea agreement, he pleaded guilty to two counts of possession of cocaine and ecstasy and one count of DUI. That agreement included the State's calculated offender score of 7.5.

At sentencing, Starling challenged the calculation of his offender score, claiming that juvenile convictions occurring before his 15th birthday should not have been included in his offender score calculation. The sentencing court did not decide this issue in light of the limited record and sentenced Starling to 15 months on each felony count, to be served concurrently.

Starling appeals his sentence.

Standard of Review

A sentencing court's calculation of an offender score is reviewed de novo.¹

Discussion

Starling argues that the sentencing court erred when it included juvenile

¹ State v. McCraw, 127 Wn.2d 281, 289, 898 P.2d 838 (1995).

convictions occurring before he turned age 15 in his offender score calculation. Relying on State v. Cruz² and State v. Smith,³ he contends that the 2002 SRA amendments do not require the inclusion of these previously “washed out” juvenile convictions.

This argument fails under State v. Varga.⁴ In that case, our Supreme Court held “that the 2002 SRA amendments properly and unambiguously require that sentencing courts include defendants’ previously ‘washed out’ prior convictions when calculating defendants’ offender scores at sentencing for crimes committed on or after the amendments’ effective date.”⁵ With that date being June 13, 2002, the court, in its application of the 2002 amendments, stated that “the legislature clearly intended that the amendments apply prospectively at sentencing for crimes committed on or after June 13, 2002. Since Varga committed his crime on June 13, 2002, the amendments require courts to include his previously ‘washed out’ conviction.”⁶

The court in Varga further explained that its holding was in line with its decisions in Cruz and Smith because the disputed SRA amendments in those cases involved different definitions of “criminal history” that failed to evidence

² 139 Wn.2d 186, 985 P.2d 384 (1999).

³ 144 Wn.2d 665, 30 P.3d 1245 (2001).

⁴ 151 Wn.2d 179, 86 P.3d 139 (2004).

⁵ Varga, 151 Wn.2d at 183.

⁶ Varga, 151 Wn.2d at 190-91.

the legislature's intent to include previously "washed out" convictions: "Unlike previous versions of the SRA in Cruz and Smith, th[e] definition of 'criminal history' [under the 2002 amendments] explicitly includes previously 'washed out' convictions."⁷ The court also pointed out the 2002 amendments "direct sentencing courts to include previously 'washed out' convictions if the current version of the SRA requires consideration of such convictions when calculating defendants' offender scores."⁸

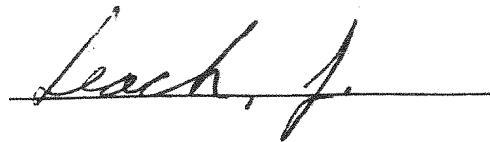
In response, Starling only asserts that "Varga was wrongly decided" and does not provide any argument.⁹ Because we are bound by Washington State Supreme Court precedent and because Varga is on point, we conclude that Starling's prior juvenile convictions were properly included in the calculation of

⁷ Varga, 151 Wn.2d at 193.

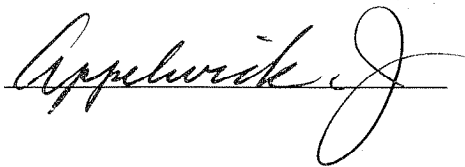
⁸ Varga, 151 Wn.2d at 193 (citing Laws of 2002, ch. 107, § 3(18)).

⁹ Varga also disposes Starling's remaining arguments, which involve claims that the legislature violated the separation of powers by enacting amendments intended to overrule Cruz and Smith and that defendants possess a vested right in their "washed out" prior convictions. See Varga, 151 Wn.2d at 194-98.

his offender score.¹⁰ Starling's current offenses occurred in 2005 and 2006, which is after the effective date of the 2002 SRA amendments. Moreover, the SRA provision in effect at the time expressly states that a defendant's criminal history includes "washed out" convictions.¹¹ Thus, the sentencing court did not err when it counted Starling's prior juvenile convictions toward his offender score. Affirmed.

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WE CONCUR:

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¹⁰ In re Pers. Restraint of LaChapelle, 153 Wn.2d 1, 5, 100 P.3d 805 (2004) ("[U]nder the doctrine of stare decisis, once we have decided an issue of state law, that interpretation is binding until we overrule it.") (internal citations and quotation marks omitted).

¹¹ Former RCW 9.94A.030(14) (2006) ("A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.").